No. 14522

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

UNITED STATES ex rel,
ALEJANDRO RACA ALCANTRA,
Appellant,

vs.

JOHN P. BOYD, District Director,
Immigration and Naturalization
Service,
Appellee.

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION

HONORABLE JOHN C. BOWEN, *Judge*

BRIEF OF APPELLEE

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ORDER APPEALED FROM

The order below is found at page 20 of the type-
itten record herein. The findings of fact and conclu-
)ns of law are found on pages 14 - 19.

JURISDICTION

The order of the District Court denying the ap plication for a writ of habeas corpus was entered Ma 28, 1954. Notice of appeal was filed in the Distric Court July 23, 1954. Jurisdiction of this court to re view on appeal the judgment of the District Cour denying the writ of habeas corpus is invoked under th provisions of Title 28, U.S.C. Section 2253, 62 Sta 967, as amended.

QUESTIONS PRESENTED

1. Whether Section 212(d)(7) of the Immigra tion and Nationality Act of 1952, requiring any alie arriving from Alaska to qualify for admission, properly interpreted as applying to aliens who hav established legal residence in the continental Unite States and are returning from a temporary visit Alaska.

2. Whether the section so construed is const tutional.

3. Whether the hearing accorded the appella satisfied the constitutional requirements of procedur due process of law.

4. Whether the appellant is an alien.

STATUTES INVOLVED

In Section 212(a) of the Immigration and Nationality Act of 1952, 66 Stat. 182, 8 U.S.C.A. 1182 (a), Congress has provided that:

> Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States: . . .

This subsection then proceeds to list 31 categories of inadmissible aliens, including those deemed objectionable for subversiveness, criminality, and physical or mental afflictions.

Section 212(d)(7) of the Immigration and Nationality Act, 66 Stat. 188, 8 U.S.C.A. 1182 (d)(7), specifies additionally:

> The provisions of subsection (a) of this section, except paragraphs (20), (21), and (26)[1], shall be applicable to any alien who shall leave Hawaii, Alaska, Guam, Puerto Rico, or the Virgin Islands of the United States, and who seeks to enter the continental United States or any other place under the jurisdiction of the United States: Provided,[2] that persons who were admitted to Ha-

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[1] Paragraphs (20) and (21) relate to the documents that must be presented by aliens seeking permanent admission as immigrants; paragraph (26) describes the documents for aliens seeking temporary admissions as nonimmigrants.

[2] This proviso relates primarily to Filipino laborers admitted to Hawaii under limited passports.

waii under the last sentence of Section 8(a)(1) of the Act of March 24, 1934, as amended (48 Stat. 456), and aliens who were admitted to Hawaii as nationals of the United States shall not be excepted by this paragraph from the application of paragraphs (20) and (21) of subsection (a) of this section, unless they belong to a class declared to be nonquota immigrants under the provisions of Section 101(a) (27) of this Act, other than subparagraph (C) thereof, or unless they were admitted to Hawaii with an immigration visa. The Attorney General shall by regulations provide a method and procedure for the temporary admission to the United States of the aliens described in this proviso. Any alien described in this paragraph, who is excluded from admission to the United States, shall be immediately deported in the manner provided by Section 237 (a) of this Act.

STATEMENT

This action was brought when the appellant was taken into custody on March 29, 1954, by the appellee after an order of the special inquiry officer, dated August 17, 1953, excluding the appellant, was affirmed by the Board of Immigration Appeals (record pp. 1, 4). The issues were framed in a pretrial order to which the parties agreed (record p. 1). At the hearing in the District Court no evidence was offered other than the agreed facts recited in the pretrial order (record p. 1).

It appears that the appellant was born May

907, at Aparri, Cagayan, Philippine Islands. He irst arrived in the United States at San Francisco, alifornia, February 23, 1928, at which time he was dmitted as a native of the Philippine Islands, not ubject to Immigration laws. He thereafter resided n the United States without becoming a citizen there- f. He was convicted of the crime of burglary Sep- mber 17, 1948. In May, 1953, he took employment n a cannery at Naknek, Alaska. He returned to the ntinental United States at Seattle, Washington, Au- ust 6, 1953, where, after inspection and a hearing y Immigration officials, he was excluded from ad- ission under the Immigration and Nationality Act f 1952, effective December 24, 1952, Section 212 (a) 9) (8 U.S.C.A. 182(a)(9)), in that he was an alien ho had been convicted of a crime involving moral rpitude, the provisions of such statute applying to ny alien returning to the continental United States om Alaska under Section 212(d)(7) of said Act 8 U.S.C.A. 1182(d)(7), (record pp. 1, 2, 3.).

The agreed issues of law related to the interpre- tion of the statute, the constitutionality of such in- rpretations, fairness of the hearing, and alienage f the appellant (record p. 4). The exhibits of record re those of the appellee, the District Director, con- sting of a transcript of the preliminary examination f the appellant at the time of his arrival at Seattle,

Washington; the transcript of the subsequent hearing before the special inquiry officer, and an affidavit of the primary immigration inspector (record p. 5 et seq.).

The District Court, indisposing of the issues of statutory interpretation and constitutionality, followed *Illwu v. Boyd*, 111 Fed. Supp. 802 (record p. 7), a decision of a Three-Judge Constitutional Court, and found that Section 212(d)(7) was properly construed as applying to resident aliens returning to continental United States from Alaska, pointing out that the statute "in plain and simple words" relates to "any alien", and that:

> "We cannot escape the obvious meaning of the language used. The words 'any alien' include aliens cited, as are those here involved."

Rejecting the constitutional attack, the District Court adopted the language of the Three-Judge Court that: "The vast and broad powers of Congress" to legislate in regard to the admission or expulsion of aliens overbalanced and overcame the limited constitutional protections afforded to resident aliens. The court found no constitutional limitation which precludes Congress from adopting similar classifications, for the purpose of exclusion, in dealing with lawfully resident aliens seeking to reenter continental United States from a territory of the United States or from a foreign coun-

y. The court otherwise held that the appellant was n alien (record p. 11), and that at the hearings iven him he was meticulously afforded his rights ursuant to procedural due process of law (record 9).

SUMMARY OF ARGUMENT

I

The first question to be disposed of is whether ie statute properly is construed as applying to alien esidents of the United States returning from a tem- prary visit to Alaska. Section 212(d)(7) of the mmigration and Nationality Act applies the exclud- ig provisions of the Immigration laws to,

> "Any alien who shall leave Hawaii, Alaska, Guam, Puerto Rico, or the Virgin Islands of the United States and who seeks to enter the continental United States."

The previous statute had a similar provision elating to arrivals from insular possessions which ncluded the Territory of Hawaii. The principal hange effected by the 1952 Act was the extension f these requirements to entrance from the Territory f Alaska.

Restrictions against entries from insular pos- essions have been enforced, without any successful hallenge, for 50 years. In the studies which preced-

ed the 1952 Act, Congress considered the feasibility of ending them. Instead, they were retained and enlarged by the inclusion of Alaska. Efforts were made to eliminate Sec. 212(d)(7) on the floor of the House of Representatives, but the amendment was voted down. The debate indicates that Congress was impressed with the need for providing a screening process to prevent the free movement of subversives and other undesirables from the territorial possessions to continental United States.

There is nothing in the language of Sec. 212(d)(7) or its history to support a thesis that it was not intended to control alien lawful residents returning to continental United States from a territory as the previous Act provided, in the same way that the Act applies to resident aliens who go abroad to a foreign place. And there can be no warrant for changing the unambiguous, unqualified language of the statute. Moreover, it seems evident that Congress did not contemplate a limited reading.

Resident aliens who leave the United States voluntarily never have been deemed to have a vested right to return. Numerous decisions of this court have held that a returning resident alien is subject to all the exclusions of the immigration laws when he seeks to reenter. *The Chinese Exclusion Case*, 13

.S. 581; *Lem Moon Sing v. United States*, 158 U.S. 38; *Polymeris v. Trudell*, 284 U.S. 279; *Shaughessy v. Mezei*, 345 U.S. 206. Sec. 212(d)(7) should e read in the light of these holdings, as one element an overall legislative design to bar objectionable lien residents who seek to return to the United tates. For the purposes of this statute Congress assimilated Alaska to a foreign country. Although the xplicit directions of the statute eliminate any need or fathoming the legislative purpose, it seems evident hat in applying this restriction to travel from Alaska, Congress deemed that aliens guilty of subversion nd criminality in the United States may be more bjectionable than those coming from abroad. Congress doubtless also was aware of the exposed situaion of Alaska, its proximity to Soviet Siberia, and he fact that aliens coming from Alaska must journey undreds of miles before coming to continental United tates.

Chew v. Colding, 344 U.S. 590, seems entirely napplicable. There this Court merely concluded that nder the circiumstances of that case it was unfair deny a hearing. The limited holding of that case as described in *Shaughnessy v. Mezei*, 345 U.S. 206.

II

As so construed, the statute is constitutional. The privilege of entering or remaining in the United States can not be characterized as a vested interest entitled to protection under the Constitution. On the contrary, numerous decisions of this court have concluded that Congress has sovereign power to determine which aliens shall be permitted to enter the United States and which shall be permitted to remain and that the courts cannot reexamine such political determinations. The controlling principles were reviewed and reaffirmed in *Harisiades v. Shaughnessy*, 342 U.S. 580; *Shaughnessy v. Mezei*, 345 U.S. 206, and *Galvan v. Press*, 347 U.S. 522. The Mezei case also confirmed many previous decisions which supported the exclusion of resident aliens seeking to return from a temporary absence. The fullness of the legislative power over the subject precludes any contention that its exercise by Congress has deprived an alien of a vested interest without due process of law.

There is nothing in the Constitution which prevents the exercise of this complete power in regard to aliens seeking to enter continental United States from Alaska. Although Alaska is an organized territory, it is not yet a state of the Union. While

laska concededly is not foreign territory, there is no ason why it must be treated as part of the United ates for every legislative purpose. As a territory, e provisions of the Constitution safeguarding "fun- mental" rights are applicable. But no "fundamen- l" right to travel from Alaska to continental United ates can be claimed by aliens.

So long as Alaska remains a territory, it remains bject to the plenary control of Congress, under Art. V, Sec. 3, cl. 2 of the Constitution. *Alaska v. Troy*, 8 U.S. 101, directly sanctions the establishment of ecial controls for commerce and travel from Alaska.

Even if it is assumed that the reasonableness the classification can be examined in this case, the assification clearly is reasonable. It stems from the ongressional concern with alien subversives, its de- re to limit their mobility, and with its feeling that reening is needed because of Alaska's special situa- on, particularly its proximity to Soviet Siberia.

III

The appellant is an alien. The facts are not in spute (record p. 1). Each time this court has con- dered the status of former Filipino nationals it has eld that under the proclamation of Philippine Inde- endence on July 4, 1946, the Filipino lost the status

of national of the United States and became an alien whether an inhabitant of the islands or domiciled in the United States. *Cabebe v. Acheson*, C.A. 9, 18[illegible] Fed. (2d), 795; *Mangaoang v. Boyd*, C.A. 9, 205 Fed (2d), 553; *Gonzales v. Barber*, C.A. 9, 207 Fed (2d), 398.

IV

The record establishes that the appellant wa served with proper notice that he understood the pro ceedings conducted in the English language and tha he waived representation by counsel. (record p. 5, e seq.). The substantive facts upon which the exclusio order is based were not denied during the deportatio hearing nor during the hearing on the writ of habea corpus; and, therefore, if procedural error was com mitted, it would not have been prejudicial. *Summi Madokoro v. Del Guercio*, C.A. 9, 1947, 160 Fed (2d), 164. Certiorari denied, 322 U.S. 764.

ARGUMENT

I

HE STATUTE IS PROPERLY CONSTRUED AS APPLICABLE TO AN ALIEN WHO SEEKS TO RETURN TO THE CONTINENTAL UNITED STATES FROM A SOJOURN IN ALASKA.

The first question on the merits relates to the pplication of Section 212(d)(7) to aliens who have stablished lawful residence in continental United tates, have made a visit to Alaska and who are ien returning. The view that such aliens are subject to xclusion if they fall within the classes which would riginally have been excluded rests on a clear expres- on of Congressional intent. The statute itself spe- fically declares in Section 212(d)(7), 8 U.S.C.A. 182(d)(7), that its prohibitions "shall be applicable *any alien* who *shall leave* Hawaii, Alaska, Guam, uerto Rico, or the Virgin Islands of the United tates, and who *seeks to enter* the continental United tates or any other place under the jurisdiction of ie United States." (Emphasis added.)

This language obviously is couched in unrestrict- d terms. Congress could have limited the thrust of is enactment to any alien resident of Alaska or any lien not returning to a residence in the United States

or any alien seeking to enter continental Unite States through Alaska. If such a narrow orbit ha been contemplated, it would have been a simp matter to chart it. But instead of limiting its co pass the statute speaks generally of "*any alien* wh shall leave" Alaska and "who seeks to enter the co tinental United States." (Emphasis added.) Th comprehensive language hardly supports a limite reading. See *Kustas v. Williams*, 194 F. (d) 64 644 (C.A. 2).

Section 212(d)(7) of the Immigration and N tionality Act of 1952 is not a departure from or rad cal extension of the historic policies of our immigr tion laws. On the contrary, it is a codification of half century's consistent practice announced in stat tory and administration directives, which have co sistently regarded the insular possessions of th United States for some purposes as the equivale of a foreign country under the immigration law The only important change introduced by the 19 Act is the extension to Alaska of exclusionary ma dates previously applied to all insular possessio of the United States, including Hawaii.

The first statutory recognition of the concept a peared in Section 1 of the Immigration Act of Fe ruary 5, 1917, 8 U.S.C. 173, which similarly co

anded that an alien leaving an insular possession of e United States would not be permitted to enter ntinental United States "under any other condi- ons than those applicable to all aliens." This lan- iage was deemed inapplicable to Alaska, which was ot regarded as an insular possession within the con- mplation of the 1917 statute. See *Chai v. Bonham*, 5 F. (2d) 207 (C.A. 9). But the statute's com- and always was regarded as encompassing aliens ho sought to come to the mainland from Hawaii, hich like Alaska enjoys the highest political status nong the territories of the United States.

The injunctions of the 1917 Act were consistently forced, without any successful challenge, in regard aliens wishing to enter the continental United ates from Hawaii. Thus in *Matsuda v. Burnett*, F. (2d) 272, 273 (C.A. 9), the court found that panese aliens lawfully admitted to Hawaii had no ght to be admitted to the mainland and stated:

> "It is true the territory of Hawaii is a part of the United States, but it is also an insular possession."

The court declared that although the statute de- ned Hawaii as part of the United States for some urposes, this definition did not preclude Congress om treating aliens coming from Hawaii as amenable the restrictions of the immigration laws. To the

same effect are *Sugimoto v. Nagle* 38 F. (2d) 20
(C.A. 9), certiorari denied, 281 U.S. 745; *Karamoto v*
Burnett, 68 F. (2d) 278 (C.A. 9).

In the protracted deliberations which preceded
the Immigration and Nationality Act of 1952, Con
gress had ample opportunity to reconsider the polic
enunciated in Section 1 of the Immigration Act o
1917. Indeed, the original committee study recom
mended elimination of the restrictions against trave
between the territories and possessions of the Unite
States and the mainland, so that "a lawfully admitte
alien resident of Hawaii, Puerto Rico, Alaska, an
the Virgin Islands may travel between such places an
between such places and the mainland, the same a
aliens traveling between any of our 48 States." S. Rep
1515, 81st Cong., 2d Sess., p. 674. And the origina
draft of the so-called Omnibus Bill (which launche
the legislative process that eventually resulted in en
actment of the McCarran-Walter Act) issued simul
taneously with the Committee study as S. 3455, 81s
Cong., 2d Sess., likewise contained no restriction
upon travel between Alaska and the United State
Such restrictions, however, were added in subsequen
versions of this measure. S. 716, H.R. 2379, and H.R
2816, 82d Cong., 1st Sess.

Undoubtedly, the main purpose of these provi
sions was to prevent excludable aliens from usin

try into and residence in the territorial possessions a means of entry into the United States.[3] The gnificant point, however, is that it was recognized the course of debate that these restrictions did similate the territorial possessions to the status of foreign country. Delegate Farrington of Hawaii, ho labored diligently to have this restriction changed eliminated, proposed two amendments to the bill[4] a preliminary colloquy with Representative Jenns Mr. Farrington observed, 98 Cong. Rec. 4304:

We are subject to the immigration laws in the

This was the stated aim of the 1917 Act. S. Rep. 2 64th Cong., 1st Sess., p. 3, commented:

The second sentence (of section 1) is section 33, act 1907, amended so as to make it perfectly clear that e admission of an alien to the insular possessions es not privilege such alien to come to the mainland ithout examination. The necessity for the provision the fact that aliens have been using the insular tertory (particularly the Philippines) as a 'stepping one' to the continent, avoiding close inspection by rst securing admission to the Philippines and then ming 'coastwise' to the United States proper."

ction 33 of the 1907 Act, 34 Stat. 908, directly afcted only aliens seeking to come from the Canal one.

Similar objections were voiced by Delegate Farringn and Resident Commissioner Fernos-Isern of uerto Rico during the final hearings on the bills. See oint Hearings before Subcommittees on the Judiciary, 2d Cong., 1st Sess., on S. 716, H.R. 2816, pp. 45-46 id 370.

> same manner as are the States, with several exceptions. One of those exceptions is the requirement that aliens traveling from Hawaii to the mainland shall be subject to the *same restrictions as aliens traveling from a foreign country to Hawaii.* I hope to offer an amendment later to correct that, because I believe it is unnecessary and extremely unjust and imposes restrictions that are nothing more than a nuisance.
>
> (Emphasis added.)

Delegate Farrington's first amendment, which sought to grant lawful residence privileges to Filipino laborers in Hawaii, was voted down. 98 Cong. Rec. 4401-4402. Thereafter Delegate Farrington offered his principal amendment, to strike from Section 212(d)(7) the restrictions upon travel from Alaska and Hawaii. 98 Cong. Rec. 4404. While the debate referred principally to the situation in Hawaii, it manifestly is relevant also to Alaska. In support of his amendment Mr. Farrington urged that the restrictions against the travel of aliens from Hawaii to the United States had outlived their usefulness, were unnecessary, and were contrary to the national interest. Id. 4405-4406. The opposition was led by Representative Walter, co-author of the bill and its principal sponsor in the House of Representatives. Representative Walter observed, id. 4406,

> The only question is whether or not aliens not citizens of Hawaii, but aliens who happen to be in Hawaii, would be required to be screened be

fore they came to the United States. What great hardshsip would that work on them? It is important to bear in mind the fact that there are a great many aliens in Hawaii who have never been properly screened . . . It is entirely a question of aliens coming to the United States, and I for one do not think they should be admitted *whether they come from Hawaii or whether they come from Europe, without being screened in order to determine whether or not they are subversive.* (Emphasis added.)

Delegate Farrington's amendment was voted own, id. 4406, and the bill ultimately was enacted ithout any change in the language of this subsec- on.[5]

Thus, the underlying concept of Section 212(d) 7), recognized as such by Congress is that, for the

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S. Rep. 1137, 82nd Cong., 2d Sess., accompanying the inal version of the bill, declares, at p. 14:

Section 212(d)(7) of the bill continues in effect the pecial procedures applicable to aliens *who travel rom* the Canal Zone, Territories, or outlying possesions to the continental United States or any other teritory under the jurisdiction of the United States. Inder the bill such procedures will also be applicable o aliens *traveling from Alaska to continental United tates.* The requirements of the act of March 24, 1934, s amended (48 Stat. 456), relating to the documentaion of certain natives of the Philippine Islands preiously admitted to Hawaii are continued in effect." Emphasis added.)

ubstantially the same statement appears in H. Rep. 365, 82d Cong., 2d Sess., p. 53.

purpose of entry into the United States by aliens, the territorial possessions are different from the continental United States and in status like that of a foreign country.

Some have continued to urge that the restrictions upon travel between Alaska and continental United States be eliminated.[6] Indeed, bills to remove this barrier have been introduced in Congress. H.R. 370, S. 952 83d Cong., 1st Sess. But we believe the legislative policy is explicitly declared in the statute and that the appropriate forum for urging a change in that policy is in the halls of Congress and not at the bar of this court.

The imposition of restrictions on entry from Alaska is equally applicable to the situation where the alien has previously resided in continental United States, has voluntarily gone to Alaska, and then attempted to return. In the first place there is clearly no exception for this particular situation in the language of the statute. In the second place, such an application is completely consistent with the Congressional policy followed for many years of limiting an

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[6]See *Report of the President's Commission on Immigration and Naturalization* (1953) pp. 183-184 *Hearings before the President's Commission on Immigration* (Sept. and Oct. 1952), pp. 1426-1428, 1490-1493.

en resident's right to reenter following a brief sit to a foreign country. Repeatedly the Supreme urt has held that an alien who leaves the United ates voluntarily,[7] for however brief an interval, akes an entry under the immigration laws upon s return. This principle was codified, with modifitions not here relevant, in Section 101(a)(13) of e Immigration and Nationality Act of 1952, 8 S.C.A. 1101(a) (13). [8]Moreover, the leading deions dealing with reentries emphatically dismiss e supposition that a resident alien who leaves the ores of the United States can insist on readmission nen he returns. *The Chinese Exclusion Case*, 130 S. 581; *Lem Moon Sing v. United States*, 158 U.S. 8; *Polymeris v. Trudell*, 284 U.S. 279; *Shaughnessy Mezei*, 345 U.S. 206.

Appellants have sought to find some comfort in *pina v. Williams*, 232 U.S. 78. (P. 8 Appellant's ief) But that holding summarily rejected the asrtion that an alien resident of the United States any vested right to return. For in that case the preme Court decided that Congress intended "to

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n involuntary, unanticipated departure does not relt in a new entry upon return to the United States. *lgadillo v. Carmichael*, 332 U.S. 388.

ee S. Rep. 1137, 82nd Cong., 2d Sess., p. 4; H. Rep. 65, 82d Cong., 2d Sess., p. 32.

bring within the reach of the statute aliens who had previously resided in this country." 232 U.S. at 93. The Court also observed, id. 91, that the statute "sufficiently expressed . . . the purpose of applying its prohibition against the admission of aliens, and its mandate for their deportation, to all aliens whose history, condition or characteristics brought them within the descriptive clauses, irrespective of any qualificaton arising out of a previous residence or domicile in this country." Similarly, in *Lewis v. Frick*, 233 U.S. 291, 297, the Supreme Court held that an alien who had visited Canada briefly was subject to exclusion upon his return and that his domicile in the United States

> did not change his status so as to exempt him from the operation of the Immigration Act . . . if he departed from the country, even for a brief space of time . . . he subjected himself to the operation of the clauses of the Act that relate to the exclusion and deportation of aliens, the same as if he had had no previous residence or domicile in this country.

Probably the leading authority is *Volpe v. Smith*, 289 U.S. 422. There the Court upheld a deportation order against a permanent resident of the United States who had made a short visit to Cuba and who was found to have made an entry into the United States upon his return. The Court's opinion observed, 289 U.S. at 425:

> We accept the view that the word "entry" . . . includes any coming of an alien from a foreign country into the United States whether such coming be the first or any subsequent one . . .

he Court brushed aside the assertion that the statute erated unfairly and stated, 289 U.S. at 425-426:

> Aliens who have committed crimes while permitted to remain here may be decidedly more objectionable than persons who have transgressed laws of another country.
>
> It may be true that if Volpe had remained within the United States, he could not have been expelled because of his conviction of crime in 1925, more than five years after his original entry; but it does not follow that after he voluntarily departed he had the right of reentry. In sufficiently plain language Congress has declared to the contrary.[9]

We believe it highly appropriate to read Section 2(d)(7) in the light of the foregoing utterances. hile the reentry doctrine concerns primarily aliens turning from a foreign port or place, it seems clear at Section 212(d)(7) was designed to assimilate laska to a foreign country for the purpose of limiting admissibility to the United States. This view the statute is consistent with the legislative policy

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[9] See also *Claussen v. Day*, 279 U.S. 398; *Stapf v. Corsi*, 287 U.S. 129; *Polymeris v. Trudell*, 284 U.S. 79. Recent reiterations of this doctrine include *Shoeps v. Carmichael*, 177 F. (2d) 391 (C.A. 9), certiorari denied, 339 U.S. 914; *Schlimmgen v. Jordan*, 164 F. (2d) 633 (C.A. 7).

in regard to alien residents who visit foreign terri tory. It is consonant also with the desire of Congres to restrict the activities and the mobility of alien charged with subversive activities in the Unite States.[10] And, if any further evidence were neede it accords with the earlier administrative reading o comparable directives of the Immigration Act of 191 *Matter of O'D.*, 3 I & N Dec. 632 (1949),[11] wher it was held that a resident alien who had fled to Puert Rico and returned had made an entry into the cor tinental United States on his return.

The arguments marshalled to confront this clea legislative purpose to treat the outlying territorie as equivalent to a foreign country seems quite insul

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[10]See *Carlson v. Landon*, 342 U.S. 524.

[11]Mention should be made of the statement in Rep. 1515, 81st Cong., 2nd Session, p. 658, where th committee in reviewing the previous law stated "Alien residents of the continental United States a not subject to the exclusion provisions of the act 1917 when traveling from the continental Unite States to any of our insular possessions and return This statement finds no support in any statute, a ministrative construction, or decision, and appea to be erroneous. Moreover, this observation relat to the first draft of the so-called Omnibus Bill whi proposed to end the restrictions upon travel from te ritories to the continental United States. As we ha pointed out (p. 13) this proposal subsequently w discarded and the committee thereafter adopted t formulation which now appears in the statute.

antial. In the first place, it is said that Congress fined Alaska as part of the United States for the rposes of the immigration laws. See Sec. 101(a) 38) Immigration and Nationality Act of 1952, 8 .S.C.A. 1101(a)(38). But Congress itself fashioned e definition and retained the power to modify it. he definintion itself relates "except as otherwise specifically provided." And Section 212(d)(7), in our ew, manifestly provides otherwise, by directing, in fect that for the purposes of that subsection Alaska to be regarded as equivalent to a foreign country.

The same considerations apply to the definition "entry" in Sec. 101(a) (13) of the Immigration nd Nationality Act. This definition states the general rule that entry ordinarily is accomplished by coming from a foreign port or place. But in unmistakable language Congress has modified this definition in ec. 212(d)(7), which declares that its commands relate to aliens who leave Alaska and seek to enter continental United States.

It is said also that it was intended to limit the mpact of Section 212(d)(7) to aliens who previously nd not satisfied the requirements of the immigration ws. But this argument overlooks the fact that least since 1924 aliens entering Alaska have had meet every qualification demanded by the immigra-

tion laws. Section 13(a) and 28(a), Immigratio Act of 1924, 8 U.S.C. 213(a) and 224(a). Under th comprehensive language of Section 212(d)(7), it i obvious that even if an alien was lawfully admitte to Alaska, he nevertheless must undergo an additiona screening if he seeks to enter continental Unite States. Therefore, the appellant cannot support hi theory that the statute was intended to have the lim ited application for which he argued.

Appellant also contends that the exclusion pro visions apply only to immigrants and that he is n longer an immigrant, since he already has been law fully admitted for permanent residence. This conte tion overlooks not only the explicit directives of th statute itself, but the entire course of antecedent leg islative policy. See p. 11, supra. The introductor language of Section 212 of the Immigration and Na tionality Act 8 U.S.C.A. 1182 stipulates that its e clusions attach to "aliens". Section 212(a)(7) lik wise refers to the exclusion of "any alien" and do not state that its restrictions are limited to alien im migrants. Moreover, even if the impact of the sta ute were regarded as limited to immigrant the statute itself defines an immigrant as "eve alien" except those specifically excepted, ar describes nonquota *immigrants* as including reside aliens returning from a temporary visit abroad. Se

on 101(a)(15) and (27), Immigration and Nation-
ity Act, 8 U.S.C.A. 1101(a)(15) and (27), Thus,
e appellant hardly can escape the reach of the stat-
e whether he is regarded as an immigrant or non-
mmigrant. See *Volpe v. Smith*, 289 U.S. 422; *La-
na v. Williams*, 232 U.S. 78; *Lewis v. Frick*, 233
S. 291.

It is said that Congress could not have intended
bar the travel of an alien resident from one part
the United States to another, since such a person is
t actually leaving the United States. This hypo-
esis is rejected by the directives of the statute itself.
or even if Alaska is regarded as a part of the Unit-
States for some purposes under the immigration
ws, Section 212(d)(7) nevertheless is explicit in
mmanding that the exculsions of those laws shall
ply to persons in that part of the United States who
ish to travel to the mainland. Certainly, even the
pellant must admit that objectionable aliens resid-
g in Alaska may be barred from continental United
ates even though it can be said that they are merely
aveling from one part of the "United States" to
nother.

In the face of the explicit language of the statute,
seems idle to conjecture about the legislative pur-
se. But, as we have pointed out, the objective of

Section 212(d)(7), manifestly is to halt the spread of subversion and the opportunities for espionage, and for other reasons, and to screen aliens so traveling. See *Carlson v. Landon*, 342 U.S. 524 535-6.[12] To paraphrase the language of the Supreme Court in the *Volpe* decision, Congress deemed that aliens who have been guilty of subversion or criminal activities within the United States may be more objectionable than aliens who have offended the laws of another country.[13] Congress evidently wished to limit the mobility of such individuals and their capacity for harming the United States.

Congress was doubtless aware of the close proximity of Alaska to Soviet Siberia and the difficulty of maintaining adequate controls in the vast, sparsely-populated expanses of the Alaska outpost and its adjacent islands. Moreover, Congress undoubtedly did not regard travel from Alaska as comparable to

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[12]In enumerating the "basic and significant changes" accomplished by the Immigration and Nationality Act of 1952, the House Committee stated that the bill "Provides for a more thorough screening of aliens especially of security risks and subversives." H. Rep. 1365, 82d Cong., 2d Sess., p. 28.

[13]The subversive alien, unlike one who engages in criminal activities, is deportable for obnoxious activities in the United States, without time limitation. See *Harisiades v. Shaughnessy*, 342 U.S. 580. Sec. 24 (a)(6) and (7), Immigration and Nationality Act of 1952, 8 U.S.C.A. 1251 (a)(6) and (7).

avel within continental United States, since an alien ming from Alaska must traverse hundreds—perps thousands—of miles of ocean or air-space which e not within the territorial confines of the United ates.

The supposition that the restrictions of Section 2(d)(7) were not intended to apply to aliens rerning from Alaska to a residence in the United ates thus is unsupported by anything in the statute elf or in the contemporaneous expressions of Coness. It stems only from a hypothetic legislative licy which would be pleasing to the appellant and nich he is urging this Court to read into the law. at Congress inscribed no such limitation in the atute. And we cannot perceive any reasonable basis r departing from the normal unambiguous meaning the language used by Congress and embarking on speculative effort to find another reading, not arculated in the statute and not supported by any incia of legislative design.

The reliance of the appellant on *Chew v. Colding*, 4 U.S. 590, likewise seems unpersuasive. That desion did not doubt the power of Congress to preribe for the exclusion of alien residents who left e continental United States. On the contrary, the urt merely concluded that under the factual cirmstances of that case Congress could not have in-

tended to deny Chew a hearing when he sought to return to the United States. The appellant does not refer to the subsequent decision of the Supreme Court in *Shaughnessy v. Mezei*, 345 U.S. 206, which described the limited reach of the *Chew* decision. In the *Mezei* case the Court carefully pointed out that " For purposes of the immigration laws, moreover, the legal incidents of an alien's entry remain unaltered whether he has ben here once before or not. He is an entering alien just the same, and may be excluded if unqualified for admission under existing immigration laws." 345 U.S. at 213.[14]

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[14]A question may perhaps arise as to how an order of exclusion would be accomplished. The last sentence of Sec. 212(d)(7) states that the excluded alien "shall be immediately deported in the manner provided by Section 237(a) of this Act." Sec. 237(a), 8 U.S.C.A. 1227(a), specifies that an excluded alien shall be "deported to the country whence he came." This does not mean he would be deported to Alaska. "Country whence he came" is a term of art, previously used also in relation to the deportation of expelled aliens. See *Mensevich v. Tod*, 264 U.S. 134. It necessarily contemplates deportation to a foreign country. *Gagliardo v. Karnuth*, 156 F. (2d) 867 (C.A. 2). And it refers to the country of nativity, unless the alien after birth acquires a domicile in another foreign country. *Schenck v. Ward*, 80 F. (2d) 422 (C.A. 1); *Di Paolo v. Reimer*, 102 F. (2d) 40 (C.A. 2). And in the instant case it would envisage deportation to the country of nativity or nationality. *Karamoto v. Burnet*, 68 F. (2d) 278 (C.A. 9).

II

THE STATUTE IS CONSTITUTIONAL

Appellant Has No Vested Right to Remain in the United States.

Appellant argues that Congress has no constitu-
nal right to treat as an entering alien one who,
ter acquiring residence here, journeys to Alaska
d returns. His principal challenge appears to be
ttomed on the premise that he will be denied sub-
antive due process of law if the immigration re-
rictions interefere with his acceptance of employ-
ent or with the resumption of a residence in con-
nental United States. This argument, however,
nores principles established by the Supreme Court
an unbroken chain of decisions from the *Chinese*
xclusion Case, 130 U.S. 581, and *Fong Yue Ting v.*
nited States, 149 U.S. 698, through *Shaughnessy v.*
ezei, 345 U.S. 206, and *Galvan v. Press*, 347 U.S.
2.

It cannot tenably be asserted, at this late date,
at an alien has inherent rights which can vanquish
e paramount power of Congress to inhibit his entry
to cut short his stay in the United States. On the
ntrary, a unanimous array of pronouncements has
und that Congress has unqualified authority, as an
cident of sovereignty, to specify which aliens shall

enter the United States and which shall be allowed to remain. Moreover, the Supreme Court invariably has insisted that such power is political in nature, touching the conduct of international affairs and national defense, and is immune from challenge in the courts. And it has always been held that a resident alien cannot demand a right to remain in the United States, if Congress in the exercise of its plenary power commands that he be excluded or expelled.[15]

It is clear, therefore, that admission for permanent residence confers no vested right to remain in this country. Thus a majority of the Supreme Court recently turned down a contention that "admission for permanent residence confers a 'vested right' on the alien . . . to remain within the country." *Harisiades v. Shaughnessy*, 342 U.S. 580, 584. In the prevailing opinion Justice Jackson observed, 342 U.S. at 586, 587-589, 591:

> Under our law, the alien in several respects stands on an equal footing with citizens, but in others has never been conceded legal parity with

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[15]The argument that the authority to regulate immigration is limited to the commerce power hardly can be supported. On the contrary, every holding of this Court, commencing with *The Chinese Exclusion Case supra*, has insisted that it springs from national sovereignty and relates to the conduct of international affairs and national defense.

the citizen. Most importantly, to protract this ambiguous status within the country is not his right but is a matter of permission and tolerance. The Government's power to terminate its hospitality has been asserted and sustained by this Court since the question first arose.

* * *

That aliens remain vulnerable to expulsion after long residence is a practice that bristles with severities. But it is a weapon of defense and reprisal confirmed by international law as a power inherent in every sovereign state. Such is the traditional power of the Nation over the alien and we leave the law on the subject as we find it.

* * *

It is pertinent to observe that any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government. Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference.

* * *

We think that, in the present state of the world, it would be rash and irresponsible to reinterpret our fundamental law to deny or qualify the Government's power of deportation.

Justice Frankfurter's concurring opinion similarly commented, 342 U.S. at 596-597:

The conditions for entry of every alien, the particular classes of aliens that shall be denied entry altogether, the basis for determining such classification, the right to terminate hospitality to aliens, the grounds on which such determination

> shall be based, have been recognized as matters solely for the responsibility of the Congress and wholly outside the powers of this Court to control.

The same concepts were underscored the same day in *Carlson v. Landon*, 342 U.S. 524, 534. Moreover, this doctrine can be buttressed by many declarations of the Supreme Court, voiced by some of its most celebrated members. Since the question has been so recently reexamined, we refer additionally only to the observations of Justice Gray in *Fong Yue Ting v. United States*, 149 U.S. 698, 711:

> The right to exclude or to expel all aliens, or any class of aliens, absolutely or upon certain conditions, in war or in peace, being an inherent and inalienable right of every sovereign and independent nation, essential to its safety, its independence and its welfare . . .

Justice Gray also pointed out that aliens residing in the United States:

> are entitled, so long as they are permitted by the government of the United States to remain in the country, to the safeguards of the Constitution, and the protection of the laws, in regard to their rights of person and property, and to their civil and criminal responsibility. But they continue to be aliens, . . . and therefore remain subject to the power of Congress to expel them or to order them to be removed and deported from the country, whenever in its judgment their removal is necessary or expedient for the public interest.

And Judge Learned Hand recently described this ncept with characteristic incisiveness in *Kaloudis Shauhnessy*, 180 F. (2d) 489, 490 (C.A. 2):

> The interest which an alien has in continued residence in this country is protected only so far as Congress may choose to protect it; Congress may direct that all shall go back, or that some shall go back and some may stay; and it may distinguish between the two by such tests as it thinks appropriate .

2. The same considerations apply *a fortiori* to alien who seeks admittance to the United States. ough some members of the Supreme Court have estioned whether the power of expulsion is unlimd, no one ever has doubted the absolute right of ngress to define the classes of aliens whose entry o the United States will be precluded. As the Sueme Court stated in *Knauff v. Shaughnessy*, 338 S. 537, 542:

> At the outset we wish to point out that an alien who seeks admission to this country may not do so under any claim of right. Admission of aliens to the United States is a privilege granted by the sovereign United States Government. Such privilege is granted to an alien only upon such terms as to the United States shall prescribe.

The unrestricted authority of Congress to bar ens applying for entry likewise was endorsed in *aughnessy v. Mezei*, 345 U.S. 206, 210. Moreover,

in dissenting on other grounds, Justice Jackson stated, 345 U.S. at 222-233:

> Due process does not invest any alien with a right to enter the United States, nor confer on those admitted the right to remain against the national will.

The Supreme Court as late as May 24, 1954 in *Galvan v. Press*, supra, speaking through Mr. Justice Frankfurter, upheld the constitutionality of the Alien Registration Act of 1940, 54 Stat. 670, and reexamined the plenary power of Congress to legislate concerning aliens in light of the expansion of the concept of substantive due process as a limitation upon all powers of Congress. The Court observed that much could be said for the view that the due process clause qualifies the scope of political discretion, heretofore recognized as belonging to Congress in regulating the entry and deportation of aliens, if the Court were writing on a clean slate. Mr. Justice Frankfurter then pointed out that the slate was not clean and that there was not merely a page of history but a whole volume which pointed to the rule that the formulation of political policies with regard to aliens is exclusively entrusted to Congress, and that this rule has been about as firmly embedded in the legislative and judicial tissues of our body politic as any aspect of our Government.

3. It is true that so long as an alien is permitted to remain in the United States he is protected against unfair impairments of his employment opportunities. *Yick Wo v. Hopkins*, 118 U.S. 356; *Truax v. Raich*, 239 U.S. 33; *Takahashi v. Fish and Game Commission*, 334 U.S. 410. But, as pointed out by Justice Jackson in the *Harisiades* case and by Mr. Justice Gray in *Fong Yue Ting v. United States*, these limited protections depend on continuance of his residence privileges in the United States and are subordinate to the sovereign power of Congress to withdraw such privileges at any time. Moreover, the immigration statute is not aimed, directly or indirectly, at any right or status of employment. Any impact on such employment opportunities is fortuitous and results from the happenstance that the prospective employee chances to be an alien. The execution of the immigration laws frequently curtails an alien's opportunities to accept employment in the United States. But the Constitution never has been regarded as affording protection against such a remote consequence of the exertion of sovereign power. See *American Communications Assn. v. Douds*, 339 U.S. 382, 390, 391, 404, 405, 409; *Hamilton v. Board of Regents*, 293 U.S. 245; *Korematsu v. United States*, 323 U.S. 214.

4. Nor can the appellant claim any advantage because he wishes to return to a permanent residence in the United States following a temporary absence. As we have pointed out, many decisions of the Supreme Court have held that an alien resident of the United States cannot demand a right to be readmitted to this country following a voluntary sojourn in a foreign country, no matter for how brief a period. In each of these holdings the Supreme Court emphasized that the sweep of Congressional authority to control the entry and residence of aliens was extensive enough to include measures directed against returning resident aliens. We refer again to *Volpe v. Smith*, 289 U.S. 422, 425; *Lem Moon Sing v. United States*, 158 U.S. 538; and *Lapina v. Williams*, 232 U.S. 78, 88. In the Lapina case the Court stated:

> The authority over the general subject-matter is plenary; it may exclude aliens altogether, or prescribe the terms and conditions upon which they may come into or remain in this country. (Citing cases.)
>
> The question, therefore, is not the power of Congress, but its intent and purpose as expressed in legislation.

That returning lawful residents can be excluded by Congress was recently emphasized again by the Supreme Court in *Shaughnessy v. Mezei*, 345 U.S. 206, 213, where Justice Clark stated:

> For the purposes of the immigration laws, moreover, the legal incidents of an alien's entry remain unaltered whether he has been here once before or not. He is an entering alien just the same, and may be excluded if unqualified for admission under existing immigration laws.

See also *The Chinese Exclusion Case*, 130 U.S. 581; *Polymeris v. Trudell*, 284 U.S. 279, 281.

It is thus established that the power to limit the entrance and residence of aliens is an attribute of sovereignty, essential to the national welfare and safety, and that even a resident alien cannot defeat the exercise of this plenary power by urging that he has a vested right to reenter or to remain in the United States. Since the power of Congress over the admittance and sojourn of aliens is so complete that it can bar reentry of an alien resident seeking to return from a temporary visit abroad (p. 25) and can require the expulsion of a long-time resident alien who has never left this country (p. 21), it is complete enough to permit Congress to treat a journey to Alaska as a departure from the United States and a return from that journey as an entry into the United States. This is a lesser limitation of residence privileges and necessarily must be included in the fullness of Congressional power in this area.

B. Congress has the power to treat a voyage to Alaska as equivalent to departure for a foreign country for the purposes of entry into continental United States.

It thus seems manifest that a resident alien cannot defeat the exercise of the plenary power to limit the entrance and residence of aliens by urging that he has a vested right to reenter or to remain in the United States. On what basis, then, can the appellant summon the aid of the Constitution? Apparently his plea is rooted in a feeling that the establishment of impediments to travel of aliens between a territory of the United States and the mainland somehow violates some precept of the Constitution.

We have pointed out that restrictions against admitance from other territories of the United States have been in force for over fifty years. This circumstance alone argues weightily against a charge of unconstitutionality. *Cincinnati Soap Co. v. United States*, 301 U.S. 308, 315. We mention also the deference due a solemn expression of the federal legislative process, and the reluctance of the Supreme Court to override it in the absence of the plainest showing of unconstitutionality. *American Communications Assn. v. Douds*, 339 U.S. 382; *Harisiades v. Shaughnessy v*, 342 U.S. 580. We note, too, the absence of any direct or indirect restraint in the Constitution

tself. These are time tested aids in appraising a tatute and each of them tips the scale against the ppellant.

The appellant's argument is, in essence, that Congress has no power to consider Alaska as different rom a state of the United States and therefore cannot treat a voyage as a departure from the United tates and an entry therefrom as a new entry into he United States. Alaska is, however, not a state of he United States; it is an organized territory of the Jnited States. *Binns v. United States*, 194 U.S. 486, 91. And Alaska is not a part of the continental Jnited States, but separated from it by a large exanse of land or water. These two factors, singly nd together, establish that Alaska may be treated ifferently from the states of the United States for nany purposes, including departure and entry under he immigration laws.

Viewed against the backdrop of our national omain, it is manifest, of course, that Alaska is not oreign territory. *American Railroad Co. v. Didrickn*, 227 U.S. 145; *DeLima v. Bidwell*, 182 U.S. 1. But this does not mean that it must be regarded as art of the United States for every purpose. It is vell known that the term "United States" may have arying connotations. Thus in some usages it may

describe the sovereign power of our nation; in others it "may designate the territory over which the sovereignty of the United States extends, or it may be the collective name of the states which are united by and under the Constitution." *Hooven & Allison Co. v. Evatt*, 324 U.S. 652, 671-2. See 1 Willoughby, *Constitutional Law* (2d Ed., 1929), 475; Langdell, *The Status of Our New Territories*, 12 Harv. L.R. 365 (1899). Whether Alaska is to be regarded as part of the United States within the contemplation of a statute or of the Constitution depends on the context. Cf. *Mullancy v. Anderson*, 342 U.S. 415; *Alaska v. Troy*, 258 U.S. 101.

In the *Insular Cases* and in subsequent decisions, the Supreme Court has evolved practical formulas for assessing the status of the inhabitants of our noncontiguous possessions. See 1 Willoughby, *Constitutional Law*, 479 et seq.; *Alaska and Hawaii: From Territorialty to Statehood*, 38 Cal. L.R. 273 (1950; Irion, *Areas Under the Jurisdiction of the United States*, 17 George Wash. L.R. 301 (1949). An important facet of these territorial doctrines is that insofar as the Constitution safeguards the "fundamental rights of the individual", and thus inhibits any action by federal officers, it applies in the United States and all its territories, whether incorporated or unincorporated. *Farrington v. Tokushige*, 273 U.S. 284, 299;

Hawaii v. Mankichi, 190 U.S. 197, 218; *Duncan v. Kahanamoku*, 327 U.S. 304; *Kepner v. United States*, 195 U.S. 100; *Soto v. United States*, 273 Fed. 628 (C.A. 3). But we are not aware of any "fundamental" right assuring to aliens in Alaska unlimited access to continental United States. On the contrary, as we have pointed out, the entire course of American constitutional doctrine negates the existence of any such absolute right of entry or residence.

Moreover, we know of no constitutional prohibition circumscribing the authority of Congress to impose restrictions on the travel of aliens between a noncontiguous territory and the mainland. Indeed, the only provision of the Constitution in which territories are mentioned in Article IV, Section 3, Clause 2, which specifies:

> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.

From the breadth of this language, it seems overwhelmingly evident that the Framers intended to bestow upon Congress complete power to legislate[16]

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[16]The constitutional reference to making regulations patently include laws. *Dorr v. United States*, 195 U.S. 138, 146.

for the territories.[17] And the Supreme Court fre quently has characterized such legislative power ove the territories as plenary.

That Congress has ample authority to make spe cial dispensations for commerce and travel to and fro Alaska is the direct holding of *Alaska v. Troy*, 25 U.S. 101. There a statute giving preference to th ports of the states over those of Alaska was attacke "upon the ground that the regulation of commerc prescribed therein gives a preference to ports of th Pacific Coast States over those of Alaska, contrar to Sec. 9, Art. I, Federal Constitution — 'No pre erence shall be given by any regulation of commerc or revenue to the ports of one State over those o another'." 258 U.S. at 109. The challenge was re jected unanimously, and the Court stated, 258 U.S at 111:

> The appellants insist that "State" in the pre erence clause includes an incorporated and o ganized territory. This word appears very ofte in the Constitution and as generally used there in clearly excludes a "Territory". To justify th

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[17]Among the supporting evidence is the fact that th Commerce Clause, Art. 1, Sec. 8, Cl. 3, confers au thority on Congress "To regulate Commerce with for eign Nations, and among the several States, an with the Indian Tribes," but does not mention com merce with territories. The obvious implication i that complete power is given in the Territorial Clause

broad meaning now suggested would require considerations more cogent than any which have been suggested. *Obviously, the best interests of a detached territory may often demand that its ports be treated very differently from those within the States.* And we can find nothing in the Constitution itself or its history which compels the conclusion that it was intended to deprive Congress of power so to act. (Emphasis added.)

Also significant is *Binns v. United States*, 194 U.S. 486, 491. In that case a license tax applicable only to Alaska was upheld. The Court found the constitutional provision for uniformity of taxes throughout the United States not applicable to Alaska, and observed:

> Congress, in the government of the Territories as well as of the District of Columbia, has plenary power, save as controlled by the provisions of the Constitution . . .

In *Cincinnati Soap Co. v. United States*, 301 U.S. 308, a tax law applicable specially to the Philippine Islands was sustained. The Court found that even if a like tax applicable to a state would be invalid, it does not follow "that such a tax for the uses of a territory or dependency would likewise be invalid. A state, except as the Federal Constitution otherwise requires, is supreme and independent." 301 U.S. at 317. The Court then declared, id. 323.

> In dealing with the territories, possessions and dependencies of the United States, this nation

> has all the powers of other sovereign nations and Congress in legislating is not subject to the same restrictions which are imposed in respect of laws for the United States considered as a political body of states in union.

And in *Hooven & Allison Co. v. Evatt*, 324 U.S. 652, the Court upheld the propriety of a tax imposed by a state upon imports from the Philippine Islands and found that under certain circumstances it was entirely proper to regard territory of the United States as equivalent to a foreign country. Again the Court pointed out, 324 U.S. at 674, that in legislating for the territories,

> Congress is not subject to the same constitutional limitations, as when it is legislating for the United States.

See also *Inter-Island Steam Nav. Co. v. Hawaii*, 30[illegible] U.S. 306; *Downes v. Bidwell*, 182 U.S. 244.

These authorities establish decisively, we believe, that complete power resides in Congress to deal specially with travel and commerce from Alaska.[18]

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[18]In addition to the examples cited in the above cases there have been a number of other instances, outside of immigration laws, of special legislative dispensations in regard to Alaska. See comment, Alaska and Hawaii; *From Territoriality to Statehood*, 38 Cal. L.R. 273, 282 (1950); Act of April 29, 1902, 32 Stat. 172; cf. 48 U.S.C. 1486.

Moreover, the special situation of a noncontiguus territory like Alaska generates an additional urce of legislative power. For in journeying from laska an alien must leave the territorial limits of e United States. Since he thereafter seeks to enter om outside the United States we believe his situaon clearly falls within the zone of sovereign legislave power to restrict entries from outside the United ates. The enactment of Section 212(d)(7) was erefore fully within the competence of Congress.

Even if we were to assume that power to deal ith travel to a territory of the United States is subct to the due process clause it seems to us that ere clearly is a reasonable basis for treating Alaska nd other noncontiguous territory as different from e continental United States for the purpose of the mmigration laws. In enacting this statute Congress oubtless took into account the special problems posed Alaska's size, its scant population, its proximity Soviet Siberia, the difficulty of establishing adeuate controls to prevent the movement of spies, saoteurs and subversives, the distances to be traversed cross foreign territory and waters in traveling from laska to continental United States, and the need or providing a screening process at the ports of ntry in the United States in order to close an avenue

affording the possibility of easy entrance for sub versives and other undesirables.[19]

Even citizens of the United States cannot clain an unlimited right of free movement which can nul lify precautionary measures adopted by the federa government in fulfilling legitimate national needs Thus, quarantine laws safeguarding the public healt are an obvious example of legislation properly re stricting free movement.[20] Another example is th selective service legislation enacted during time o war or danger.[21] Also sustained have been extrem measures limiting the mobility of West Coast resi dents of Japanese ancestry, citizens and aliens, unde war-time conditions of peril.[22] Federal mandates fo the registration of aliens likewise are valid,[23] as ar summary procedures for the internment and remova

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[19]See H. Rep. 675, 83rd Cong., 1st Sess., pp. 6, 14 which refers to the fact that from Alaska, "Across narrow strip of water, Siberia can be seen with th naked eye."

[20]*Thorton v. United States*, 271 U.S.414; *Mintz v Baldwin*, 289 U.S. 346; *Compagnie Francaise v. Lou isiana State Board of Health*, 186 U.S. 380.

[21]*Selective Draft Law Cases*, 245 U.S. 366; *Unite States v. Henderson*, 180 F (2d) 711 (C.A. 7), cer tiorari denied, 339 U.S. 963.

[22]*Hirabayashi v. United States*, 320 U.S. 81; *Kore matsu v. United States*, 323 U.S. 214.

alien enemies.[24] Additional restrictions limit the ovement of alien enemies during wartime,[25] and ner edicts sanction restricted mobility of citizens d aliens during time of war or national emer- ncy.[26]

These examples are displayed merely to illustrate e wide expanse of federal power. They demonstrate cisively, we believe, that under exigent circum- nces, arising out of a national need, even some re- rictions upon travel between states might well be emed justified. But this question is not now before e Court. In view of the plenary power of Congress er the territories, and its unqualified power to reg- ate the entry and expulsion of aliens, Congress clear- has the power to determine that a voyage to Alaska all be deemed a departure from the United States r the purpose of the immigration laws.

Hines v. Davidowitz, 312 U.S. 52; *Fong Yue Ting United States*, 149 U.S. 698; *United States v. anklin*, 188 F. (2d) 182 (C.A. 7); *Gancy v. United ates*, 149 F. (2d) 788 (C.A. 8) certiorari denied, 6 U.S. 767.

Ludecke v. Watkins, 335 U.S. 160.

Presidential Proclamations 2525, 2526, 2527, 2537, d 2563, 6 F. R. 6321, 6323, 6324, 7 F. R. 329, 5535.

Presidential Proclamations 2523, 6 F. R. 5821; and 04, 18 F. R. 489.

III

APPELLANT WAS NOT DENIED DUE PROCES

The appellee agrees with the general legal prir ciples set forth at page 22 of the appellant's brief t the effect that the appellant is entitled to due pr cess of law which encompasses a reasonable notice c the evidence he is required to meet and a right to b represented by counsel during a hearing which d termines his status under the immigration laws. Ap pellant argues in his brief that he was not accorde due process in that: No notice of the charges wa given him; that the charges were not explained t him; that his rights were not explained to him an that he was not furnished with an interpreter.

It should be noted that in appellant's petitio below, the only reference to a lack of due proce was the allegation that petitioner was not afforde opportunity to obtain counsel or an interpreter. Ap parently the additional charges enumerated, supr which were strictly after-thoughts, added in the bri below, are now the only grounds urged by appella in this court as a denial of due process.

To refute the charges made will involve a factu review of the administrative proceedings conducted b the Immigration Service. The record establishes tha when appellant was initially interviewed August

)53 (R. Ex. A, p. 1), he was advised by the Immi-ation officer that the Immigration officer desired to tain a statement from him regarding his right to and remain in the United States and to enter the nited States from Alaska. He was further advised at any statement should be voluntary and warned at such a statement could be used against him. The ppellant, without hesitation, stated that he was will-g to answer questions under oath.

The officer asked him if he could speak and nderstand English and he said, "Yes, I can speak little bit." The officer then asked him if he had nderstood and he answered, "Yes." The officer then dvised him, "In the event that you do not understand e at any time in this proceeding will you please tell e right away in order that I can ask you the ques-n in such a way that you will understand?" and the ppellant stated that he would. There then followed veral pages of questions and answers during which did not appear from the transcription that there as any misunderstanding between appellant and the mmigration officer. Appellant was then advised at the question of his admissibility would be re-rred to a Special Inquiry Officer and that a formal tice of such referral would be given to him, at hich time he would be advised with respect to rep-sentation before such officer (R. Ex. A, p. 5). He

was then asked if he understood that, appellant re
plied, "Yes."

At the end of this interview he was asked:

"Q. Have you understood all of these questions?
and he replied, "Yes." (R. Ex. A, p. 6).

He was thereafter served with Immigratio
Form 1-122 by this same officer, Jess L. Giles (R. E
B, Ex. 1). This notice stated:

> "You are hereby notified that since you do nc
> appear to me to be clearly and beyond a doul
> entitled to enter the United States, you are de
> tained for further examination by a Special In
> quiry Officer to determine whether you are en
> titled to enter the United States under the pro
> visions of the Immigration and Nationality Ac
> During such examination you have a right to b
> represented by counsel and to have a friend c
> relative present."

This notice was then read to him and he stated tha
he understood it. (R. Ex. C.).

Appellant was then released from custody for
period of eleven days. He was given ample oppo
tunity to obtain the services of an attorney.

When he appeared for hearing on August 1
1953, the Special Inquiry Officer asked him if h
understood the English language. He replied, "Jus
a little bit." (R. Ex. B. p. 1). The Special Inquir

ficer than asked him, "Do you understand me suf-
iently well to know what I am talking about?"
replied, "Yes". He was then advised (R. Ex.
p. 2):

"At this hearing you may be represented by counsel of your own choice and at your own expense, which counsel may be an attorney at law or any other person qualified to practice before this Service and the Board. Do you wish to be so represented?"

Appellant answered, "No". He was then ad-
ed:

"You are advised that at this hearing you may have present a relative or friend who, if testifying as a witness in your behalf, must first complete his testimony before being permitted to remain at this hearing. Do you wish to have a relative or friend present?"

d the appellant replied, "No".

Thereafter followed six pages of testimony dur-
which the Special Inquiry Officer frequently in-
rupted to inquire if the appellant understood and
stated that he did understand. There is nothing
the record to indicate that he did not understand
at was transpiring. At the conclusion of the hear-
the Special Inquiry Officer stated (R. Ex. B,
7):

"Do you have anything to say in your own behalf

as to why you should not be refused permissi
to enter the United States?"

The appellant responded:

"I have nothing to say."

The Special Inquiry Officer then advised hi
that he would orally announce his decision in the ca
At this juncture appellant stated that he understoc
After delivering the decision, which is included in t
record of hearing (R. Ex. B, Ex. 1) the appella
was asked whether he understood the decision a
order and he stated that he did.

The appellant was thereafter advised with r
spect to his right to appeal and he stated that
wished to appeal the decision and also was aga
advised with respect to his right to submit a bri
with his appeal. Two days later he was represent
by counsel who was given an opportunity to subm
a brief on appeal to the Board of Immigrati
Appeals.

It is evident from a review of the above excer
that appellant was accorded due process. In fa
as was noted below, by District Judge John C. Bow
in his oral opinion (R. 9) the hearing examiner a
forded appellant meticulous due process.

Prior to an examination of the exact contentions
de by appellant, it should be noted in passing that
instant proceeding is one for exclusion and under
. 291, Immigration and Nationality Act of 1952,
Stat., 234, the burden is on appellant to establish
t he does not fall within one of the grounds for
lusion.

NOTICE

Appellant on page 32 of his brief admits the
eipt by him of form I-122 (Respondent's Exhibit B
. Ex. A-1 to Ex B)) being the notice of charges,
states that it was not explained to him. Respon-
t's Exhibit C (R. Ex. C) shows that the notice
s read to appellant and that he said he understood
This more formal notification was in addition to
initial advice that appellant was to give a state-
nt regarding his right to enter from Alaska (R.
. A, p. 1).

UNDERSTANDING

In the initial interview, August 6th, the appel-
t stated frequently, in answer to the Examina-
n Officer's questions, that he understood (R. Ex.
p. 1 and 6). That officer also stated that he had
difficulty in making himself understood (R. Ex.
). It is not surprising that appellant could under-

stand the English language, as the record shows th
appellant had spent some 26 years in this country.

Appellant makes much of his answer, "Just
little bit" to the question "Do you understand t
English language?" (R. Ex. B, p. 1). However, th
answer is torn completely out of context. This he
ing and the prior hearing taken in their entire
amply show his understanding and the lack of ne
for an interpreter.

RIGHT TO COUNSEL

Appellant was advised of his right to counsel
August 6, 1953 (R. Ex. A, p. 5) and thereafter h
ten days to procure same. On August 17,1953,
expressly stated that he did not desire to be rep
sented (R. Ex. B. p. 2). Such a statement amou
to a legal waiver of the right to counsel. *U. S. ex*
Mustafa v. Pederson, 207 F. (2d) 112 (C.A. 7
U. S. v. Burmaster, 24 F. (2d) 57 (C.A. 8); *Di C*
tanzo v. Uhl, 6 F. Supp. 791 (D.C. N.Y.).

Even if appellant had not been informed of
right to counsel or the same had been denied hi
there could be no prejudicial error since all the fa
brought out at the hearing were admitted to be tr
This Court in *Sumio Madokaro v. Del Guercio*, 1
F. (2d) 164, cert. denied 322 U.S., 764, held th

ere all the facts elicited at the hearing relevant to ortation are admitted to be true, failure to have nsel, if error, like other errors, may not be pre- icial.

It should be noted that appellant was represent- by counsel for purposes of appeal and that at no e subsequent to the decision of the Inquiry Officer ; any request made for the consideration of any itional factual matter or for a rehearing.

IV

THE APPELLANT IS AN ALIEN

Appellant advances the argument that he is not an alien and for this reason the deportation pro- ding must fail for lack of jurisdiction. It is ad- ed that appellant was a national of the United tes residing in this country, on July 4, 1946, the al effective date of the Philippine Independence of 1934, 48 Stat. 456. However, appellant denies application of this act to change the status of his dence in the United States subsequent to July 946.

Appellant's argument is not novel, similar ques- ns of status have been decided adversely to this ument, in three decisions handed down by this rt. *Cabebe v. Acheson*, 183 F. (2d) 796; *Man-*

gaoang v. Boyd, 205 F. (2d) 553 and *Gonzales v. B*
ber, 207 F. (2d) 398, Rev. 347 U.S. 637, on oth
grounds. In the Cabebe case this Court examined
some detail the statutory development of Philipp
Independence and the attendant treatment of perso
rights. The Court noted that the Philippine In
pendence Act supra, provided that citizens of t
Philippines who are not citizens of the United Sta
shall be considered as if they were aliens, and h
that this provision was also intended to apply
Filipino residents in the United States on July 4, 19

Appellant, considering the interpretation of t
above act by this Court, now apparently challen
the constitutionality of this statute as interpreted
the above decisions. Appellant's argument is ba
on a very tenuous assumption that appellant's sta
prior to July 4, 1946, as a national of the Uni
States had to be either a status of citizenship or
alienage. The Cabebe opinion, supra, appears to a
quately dispose of this problem when at page 797
is said:

> "Accordingly, it was realized that while all c
> zens of the United States were nationals, not
> nationals were citizens. A hybrid status
> peared, the so-called "non-citizen national."

Again, the position taken by the 8th Circuit
the case of *Gancy v. U. S.*, 149 F. (2d) 788, cert.

d, 326 U.S. 767, which held that a Filipino resi-
t in the continental United States was subject to
Alien Registration Act of 1940, shows the incon-
ency in appellant's contention that his status was
atical to that of citizenship. That Court at page
stated:

> "Manifestly, the natives of the Philippine Islands did not become citizens of the United States by virtue of the Treaty of Paris, and unless Congress, which has the sole power to provide for naturalization has conferred citizenship upon them, it would seem clear that they must still be aliens whatever other rights or privileges as American nationals they may enjoy."

Appellant is admittedly not a native born citi-
nor has he applied for naturalization; therefore,
status as a citizen can only be argued to arise
ough some Congressional enactment having auto-
tic application to persons in appellant's position.
ngress has the sole power to provide for naturali-
ion, *Gancy v. U. S.* supra.

Appellant can point to no such Congressional ex-
ssion, and in fact the only provision pertinent to
s inquiry is contained in The Philippine Independ-
e Act of 1934, supra, wherein it was expressly de-
red that Filipinos who were not already citizens
he United States should, for purposes of immigra-
n acts, be considered aliens.

CONCLUSION

For the foregoing reasons, it is respectfully s
mitted that the judgment below should be affirm

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